IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21556 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALYANBHAI HARJIVANBHAI DECEASED BY HEIRS & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR PJ VYAS for Petitioner(s) : 1 - 4.
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/10/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the

Principal Secretary (Appeals), Revenue Department, State of Gujarat dated 4.10.2005 passed in Revision Application No.51/2003 in allowing the said Revision Application and quashing and setting aside the order passed by the Collector, Surat dated 11.3.2002 passed in RTS Revision Application No.258/2000 in restoring revenue Entry in favour of private respondents herein.

2. It appears from the record that the father of the petitioners deceased Kalyanbhai Harjivanbhai was the owner of the land in question which came to be sold in favour of the private respondents by registered sale-deed dated 18.4.89 and on the basis of the said sale-deed Entry No.3043 came to be posted in the village form No.6 on 23.12.1991 and thereafter, the said Entry also came to be certified. As the Collector, Surat was of the opinion that by virtue of sale transaction between the private respondents herein and original land owner Kalyanbhai Harjivanbhai, there is a breach of provisions of Section 63 read with Section 36(1)(F) of the Rules as well as Section 7 of the Bombay Prevention of Fragmentation Act and therefore, the said Entry was taken under suo-motu revision by the Collector, Surat and the show-cause notice came to be issued on 11.8.2000 and thereafter, by its judgment and

order dated 11.3.2002 set aside the Entry No.3042 with regard to the land bearing Survey No.337/1 situated at village Dumas, Taluka Choryasi. Being aggrieved and dissatisfied with the order passed by the Collector, Surat dated 11.3.2002 passed in suo-motu RTS Revision Application No.258/2000, the private respondents herein-purchasers preferred Revision Application before the State Government i.e. Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.51/2003 and the Principal Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 4.10.2005 allowed the said Revision Application and quashed and set aside the order passed by the Collector, Surat dated 11.3.2002 passed in RTS Revision Application No.258/2000 in setting aside Entry in question. Being aggrieved and dissatisfied with the aforesaid order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, the petitioners-the heirs of original land owner have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri P.J.Vyas, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Collector, Surat passed order without giving any

opportunity to the original land owner and/or his heirs. He has also further submitted that in other similar cases, when the Collector set aside Entry on the ground that the private respondents were not the agriculturists and that there is a breach of provisions of Section 63 of the Bombay Tenancy Act, the said orders were confirmed by the Secretary (Appeals), Revenue Department, State of Gujarat. However, in the present case, the Principal Secretary (Appeals), Revenue Department, State of Gujarat has allowed the Revision Application and set aside the order passed by the Collector, Surat, which is required to be quashed and set aside. It is also further submitted that as such the proceedings were initiated for setting aside Entry No.3043 however, actually Entry No.3042 is set aside and therefore also, it is requested to allow the present Special Civil Application.

4. It is required to be noted that private respondents are the purchasers of the land in question which they have purchased from the original land owner i.e. Kalyanbhai Harjivanbhai by registered sale-deed as far back as in the year 1989 and necessary Entry was also posted vide Entry No.3043 on 23.12.1991. It is also required to be noted that it is the Collector, who had taken the

aforesaid Entry into suo-motu revision and not the original land owner and/or the petitioners and that too after a period of almost 11 years of the said transaction. The aforesaid Entry came to be set aside on the ground that there is a breach of provisions of Section 63 of the Bombay Tenancy Act. As held by this Court in case of ***Evergreen Apartment Co-op. Housing Society*** V/s. ***Special Secretary, Revenue Department, Gujarat State*** reported in ***1991(1) GLR Page-113***, the revisional authority has no jurisdiction to set aside the Entry on the ground that the same is in breach of any other law. Considering the delay in exercise of powers by the Collector, Surat when the revisional authority has set aside the order, it cannot be said that there is any illegality committed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat. Even otherwise, so far as the petitioners are concerned, they are the heirs of original land owner and that they have never challenged the Entry and even otherwise, in view of the fact that they have sold the land to the private respondents herein by registered sale-deed and had pocketed the money. It is not open for the petitioners to contend that the said sale was illegal. However, Shri Vyas, learned advocate appearing on behalf of the petitioners is justified in making

grievance that the show-cause notice was issued with regard to revenue Entry No.3043 and in the operative portion of the order Entry No.3042 is set aside and the said order has been confirmed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat. It, prima-facie, appears that there is obvious and typographical mistake/error as all throughout the discussion is with regard to Entry No.3043 and only in the operative portion of the order Entry No.3042 is mentioned. Even before the Principal Secretary (Appeals), Revenue Department, State of Gujarat the discussion is with regard to Entry No.3043 and the lands in question is pertaining to Entry No.3043. Under the circumstances, it will be open for the petitioners to move an appropriate application before the Collector, Surat to modify and/or clarify its order and correct the error by mentioning Entry No.3043 in place of Entry No.3042 and as and when such application is made, the Collector, Surat is directed to consider the same and correct the error, if any.

5. With these observations and direction, the present Special Civil Application is dismissed.

(M.R.SHAH, J.)

kdc.